IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.459 OF 2005

Balmer Lawrie & Co. Ltd. ..Petitioner.

Vs.

Nivrutti N. Agalawe & anr. ..Respondents.

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Mr.P.M.Palshikar for the Petitioner.

Mr.R.D.Bhat for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

1st March, 2005.

P.C. :

1. Rule, made returnable forthwith by consent of counsel. Counsel appearing on behalf of the Respondents waives service. By consent, taken up for hearing and final disposal.

2. This Petition is filed against an order of the Industrial Court dated 14th January, 2005 in a complaint of unfair labour practices under Item 6 of Schedule II and Items 6, 9 and 10 of Schedule IV

of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. By its order the Industrial Court has held that the Petitioner was guilty of engaging in an unfair labour practice under Items 6 and 9 of Schedule IV and has directed the Petitioner to grant to the First Respondent the benefit of permanency on the date of completion of 240 days on his first appointment dated 1st December, 2003.

3. The First Respondent instituted a complaint on 17th September, 2002. Apart from seeking a declaration in regard to the commission of unfair labour practices by the Petitioner, the First Respondent sought a declaration that he was a permanent workman; a direction to the Petitioner to pay the same wages as were paid to the permanent staff of the company and a direction to pay to the First Respondent wages and other benefits from 22nd July, 2002 until he was given regular work. In the complaint, the First Respondent averred that he was initially engaged in the Oleo Chemicals and Speciality Division (OSD), in the plant of the Petitioner at Taloja. The aforesaid plant was stated to have been closed on 11th November, 1999

at which point of time the services of 46 employees were terminated. According to the First Respondent he had initially been appointed on a temporary basis with breaks in service since 1st December, 1993 till 11th August, 1994 after which no appointment letters were given to him. According to the First Respondent his services were, however, continued until the closure of the OS Division, after which he was continued in the Lube Oil Blending Plant until 22nd July, 2002. The grievance of the First Respondent was that after the aforesaid date he was not allowed to report for work. The contention of the First Respondent was that he had worked for more than 240 days in 12 calender months since his initial appointment from 1st December, 1993 and that he was entitled to the status of a permanent workman under the model standing orders either in the OS Division or in the Lube Oil Blending plant.

4. The Petitioner filed its written statement in which it was averred that the OS Division was set up in 1989 and employed 46 workmen. The aforesaid division closed with effect from 11th November, 1999. 46 workmen had been engaged therein. The

First Respondent was, however, continued in service in the Lube Blending Division as a temporary workman on the closure of the earlier division where he was engaged. In the Lube Blending Division contract labour has been engaged and there are no permanent workmen. When the OS Division was closed, the services of 39 workmen were terminated out of the total number of 46 who were engaged and 7 workmen who were working as clerks were appointed as fresh employees in the Lube Blending Division. The company then sought to offer a justification for not granting to the First Respondent the benefit of permanency. The case of the company was that both in the OS Division as well as in the Lube Blending Division less than 50 employees had been engaged.

5. Evidence was adduced before the Industrial Court. In its order dated 14th January, 2005 the Industrial Court came to the conclusion that the First Respondent was entitled to the benefit of model standing order 4-C and that as a workman who had put in 240 days of uninterrupted service in any period of 12 calender months, he was entitled to permanency.

6. These findings of the Industrial Court have been challenged in proceedings under Article 226. On behalf of the Petitioner it has been submitted that the workman was engaged in the OS Division where less than 50 persons were employed. Consequently, the Industrial Employment (Standing Orders) Act, 1946 and the model standing orders had no application since Section 1(3) spells out that it applies to every industrial establishment where 50 or more workmen are employed or were employed on any date of the preceding 12 months. The expression 'industrial establishment' is defined in Section 2(c) inter alia to mean a factory as defined in Section 2(m) of the Factories Act, 1948. In the circumstances, it was urged that the basis of the order of the Industrial Court is erroneous and that the interference of this Court under Article 226 is warranted.

7. While considering the aforesaid submission, it would be necessary for the Court to consider at the outset the pleadings of the parties. The plea which the First Respondent set up in his complaint was that when the closure notice was issued on 11th

November, 1999 at the OS Division, the services of 46 employees came to be terminated. In the written statement which was filed by the management its case was specifically to the effect that 46 workmen were engaged in the OS Division of whom 39 came to be terminated while the balance were employed as fresh employees in the Lube Blending Division. Both the Petitioner and the First Respondent would therefore be ad idem on the circumstance that less than 50 employees were engaged in the OS Division.

8. Indeed, it appears that the closure of the OS Division was challenged before this Court in Writ Petition 7654 of 2003. In an order dated 5th January, 2004 a learned Single Judge of this Court (R.S.Mohite, J.) noted that though an attempt had been made in the course of the evidence in that case to establish that more than 46 persons had been engaged, the witness for the Petitioner therein had admitted that he was not aware about the actual working of the allegedly additional workmen. In the present case, however this dispute need not detain the Court, because both the complaint and the written statement proceeded on the basis that 46 persons were employed in the OS

Division.

9. In so far as the evidence is concerned, the Petitioner in the course of his examination-in-chief sought to state that apart from 46 employees there were four temporary workmen, but this is clearly inconsistent with his own pleadings, particularly paragraph 3.2 of the complaint in which the strength of OS Division is stated to have been 46 at the point of closure on 11th November, 1999. In so far as the Lube Blending Division is concerned to which the Petitioner was assigned after the closure of the OS Division, there is no dispute about the fact that less than 50 employees have been engaged therein. The witness who deposed on the part of the management specifically stated that less than 50 employees are engaged in the Lube Blending Division.

10. Neither the pleadings nor the evidence have been considered by the Industrial Court. The Industrial Court does not seem to proceed on the basis that model standing order 4-C will apply on its terms since the observation in paragraph 16 of

the impugned order is that the principle which underlies the order can be made applicable. Then in paragraph 21 the observation of the Court is that since the First Respondent was appointed as a general workman, it cannot be said that his appointment was confined to the Lube Blending Division and that it was not the case of the management that the total strength of the company employees was less than 50. In my view, the entire approach of the Industrial Court is flawed and overlooks fundamental provisions of law. The Industrial Court has failed to comprehend that the essential requirement for the applicability of the Industrial Employment (Standing Orders) Act, 1946 is the engagement of 50 workmen in the establishment. In the present case neither in the OS Division nor in the Lube Blending Division have 50 or more workmen been employed. Indeed the earlier order of this Court dated 5th January, 2004 clearly shows that less than 50 workmen were in fact engaged in the OS Division. That being the position, the basis on which the Industrial Court granted relief to the First Respondent is flawed. The finding is contrary to the pleadings and ignores the evidence. Once it is established that

less than fifty workmen were engaged in the establishment, the grant of permanency under Model Standing Order 4-C is not warranted. The Act and consequently the Model Standing Orders would not stand attracted. In prayer clause (d) of the complaint a direction was sought to the Petitioner to pay to the First Respondent wages and other benefits from 22nd July, 2002 till he was given regular work. The Industrial Court, however, has directed the grant of permanency on the completion of 240 days from the first appointment on 1st December, 1993. Hence, in my view, it is necessary for the Industrial Court to reconsider the entire matter afresh and to decide whether the First Respondent is entitled to any relief in the complaint on the other grounds which have been claimed therein. Conscious as I am of the supervisory nature of the jurisdiction under Article 226, a clear case for interference is made out for the aforesaid reasons.

11. This Petition is accordingly allowed. The impugned order of the Industrial Court dated 14th January, 2005 is quashed and set aside. Complaint (ULP) 840 of 2002 is restored to the file of the

Industrial Court. Parties are directed to appear before the Industrial Court for directions on 14th March, 2005 so that a time schedule can be fixed for expeditious disposal of the complaint on merits. The Petition is disposed of in these terms. There shall be no order as to costs.